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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 MICHAEL GLAVE,

11 Petitioner,

12 v.

13 PATRICK GLEBE,

14 Respondent.

CASE NO. C11-5529-RJB-JRC

ORDER STAYING AN ACTION
AND DIRECTING POTENTIAL
“NEXT FRIEND” PETITIONERS TO
SHOW CAUSE

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16 This petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 has
17 been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C.
18 § 636(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Respondent
19 has filed a motion to dismiss Dana Glave and Alvin Hegge as “next friend” petitioners
20 (ECF No. 15). Dana Glave and Alvin Hegge have not been named as “next friend”
21 petitioners because they never brought a motion before the Court. See Vargas v.
22 Lambert, 159 F.3d 1161, 1165 (9th Cir. 1998)(mother filed a motion to be appointed her
23 son’s “next friend.”). “Next friend” standing is by no means granted automatically to
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1 whoever seeks to pursue an action on behalf of another. Whitmore v. Arkansas, 495 U.S.
2 149, 163 (1990). As noted in Vargas v. Lambert, 159 F.3d at 1166:

3 The Supreme Court recognized in *Whitmore* that a habeas petitioner
4 may demonstrate standing as a “next friend.” 495 U.S. at 163, 110
5 S.Ct. 1717. A next friend does not herself become a party to the
6 habeas petition, “but simply pursues the cause on behalf of the
7 detained person, who remains the real party in interest.” *Id.* The
8 Court set out “at least two firmly rooted prerequisites to ‘next friend’
9 standing”:

10 First, a next friend must provide an adequate explanation-such as
11 inaccessibility, mental incompetence, or other disability-why the real
12 party in interest cannot appear on his own behalf to prosecute the
13 action. Second, the next friend must be truly dedicated to the best
14 interests of the person on whose behalf he seeks to litigate and it has
15 been further suggested that a next friend must have some significant
16 relationship with the real party in interest. The burden is on the next
17 friend clearly to establish the propriety of his status and thereby
18 justify the jurisdiction of the court.

19 Petitioner in this action, Michael Glave, signed the petition (ECF No. 1). It was
20 served and respondent has filed a motion to dismiss the petition as time barred (ECF 11).

21 Defendants have also filed a motion to dismiss Dana Glave and Alvin Hegge (ECF
22 No. 15), who have asked for an extension of time to respond to that motion (ECF 17).

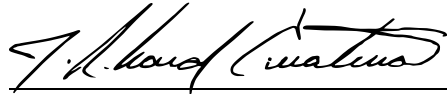
23 The Court does not know if Mr. Glave may need a “next friend” to represent him.
24 Dana Glave and Alvin Hegge should make application to the Court in order for the Court
to make that determination.

Therefore, this action is STAYED. Dana Glave and Alvin Hegge will have until
November 18, 2011, to file a motion with supporting evidence showing that Mr. Glave is
unable to represent himself. The burden is on the “next friend” clearly to establish the

1 propriety of his status and thereby justify the jurisdiction of the court. Id. at 164; (citing)
2 Groseclose ex rel. Harries v. Dutton, 594 F.Supp. 949, 952 (MD Tenn.1984).

3 Respondent will have until December 9, 2011, to respond. Dana Glave and Alvin
4 Hegge will have until December 16, 2011, to file a reply and the Court will then consider
5 whether Mr. Glave may proceed with this petition himself or if appointment of either a
6 “next friend” petitioner or counsel is appropriate in this case.

7 Dated this 17th day of October, 2011.
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11 J. Richard Creatura
12 United States Magistrate Judge
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